

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	12/07/2018	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 1/18/2019

2. COMAR Codification

Title Subtitle Chapter Regulation

10 58 06 01-.06

3. Name of Promulgating Authority

Maryland Department of Health

4. Name of Regulations Coordinator

Jake Whitaker

Telephone Number

410-767-6499

Mailing Address

201 W. Preston Street

City	State	Zip Code
Baltimore	MD	21201

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Jake.whitaker1@maryland.gov

5. Name of Person to Call About this Document

Lillian Reese

Telephone No.

410-764-5978

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lillian.reese@maryland.gov

6. Check applicable items:

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: .

- Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes - No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

- OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

- OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Rhonda Edwards, Assistant Attorney General, (telephone #410-767-6023) on October 19, 2018. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Robert R. Neall

Title

Secretary of Health

Telephone No.

410-767-6500

Date

November 27, 2018

Subtitle 58 BOARD OF PROFESSIONAL COUNSELORS AND THERAPISTS
10.58.06 Teletherapy

Authority: Health Occupations Article, §§1-901—1-903, Annotated Code of Maryland,
and Ch. 505, Acts of 2008

Notice of Proposed Action

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The Secretary of Health proposes to repeal in their entirety Regulations .01—.03 under COMAR 10.58.06 Licensure by Waiver and adopt new Regulations .01—.06 under a new chapter COMAR 10.58.06 Teletherapy.

This action was considered by the Board of Professional Counselors and Therapists at a public meeting on October 19, 2018, notice of which was given by publication on the Board's website at <https://health.maryland.gov/bopc/Pages/index.aspx> pursuant to General Provisions Article, §3–302(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to:

- (1) Repeal the chapter regarding licensure by waiver because the authority was repealed by Chapter 505, Acts of 2008; and
- (2) Establish a new teletherapy chapter pursuant to Chapter 610, Acts of 2017.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Jake Whitaker, Acting Director, Office of Regulation and Policy Coordination, Maryland Department of Health, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 TTY: 800-735-2258, or email to

mdh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through February 19, 2019. A public hearing has not been scheduled.

Economic Impact Statement Part C

- A. Fiscal Year in which regulations will become effective: FY 2019
- B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?
- C. If 'yes', state whether general, special (exact name), or federal funds will be used:
- D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:
- E. If these regulations have no economic impact under Part A, indicate reason briefly: These regulations define teletherapy and establish procedures for counselors and therapists using teletherapy in their practice.
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.
- See E. above.
- G. Small Business Worksheet:

Attached Document:

Title 10

MARYLAND DEPARTMENT OF HEALTH

Subtitle 58 BOARD OF PROFESSIONAL COUNSELORS AND THERAPISTS

10.58.06 Teletherapy

Authority: Health Occupations Article, §§1-901—1-903, Annotated Code of Maryland; and Ch.505, Acts of 2008

.01 Scope.

This chapter applies to the following who provide behavioral health services using teletherapy in Maryland:

- A. Certified associate counselor—alcohol and drug (CAC—AD);*
- B. Certified professional counselor (CPC);*
- C. Certified professional counselor — alcohol and drug (CPC—AD);*
- D. Certified professional counselor—marriage and family therapist (CPC—MFT);*
- E. Certified supervised counselor—alcohol and drug (CSC—AD);*
- F. Licensed clinical alcohol and drug counselor (LCADC);*
- G. Licensed clinical marriage and family therapist (LCMFT);*
- H. Licensed clinical professional art therapist (LCPAT);*
- I. Licensed clinical professional counselor (LCPC);*

- J. Licensed graduate alcohol and drug counselor (LGADC);*
- K. Licensed graduate marriage and family therapist (LGMFT);*
- L. Licensed graduate professional art therapist (LGPAT); or*
- M. Licensed graduate professional counselor (LGPC).*

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

- (1) "Board" means the Maryland Board of Professional Counselors and Therapists.*
- (2) "Client" means the individual, couple, family, group, business, agency, school, organization, or association that the counselor or therapist provides, or has provided, with professional services.*
- (3) "Counselor or therapist" means an individual who is licensed or certified by the Board to practice:*
 - (a) Certified associate alcohol and drug counseling;*
 - (b) Certified professional counseling;*
 - (c) Certified professional alcohol and drug counseling;*
 - (d) Certified professional marriage and family therapy;*
 - (e) Certified supervised alcohol and drug counseling;*
 - (f) Clinical marriage and family therapy.*
 - (g) Clinical professional alcohol and drug counseling;*
 - (h) Clinical professional art therapy;*
 - (i) Clinical professional counseling;*
 - (j) Graduate alcohol and drug counseling;*
 - (k) Graduate marriage and family therapy;*
 - (l) Graduate professional art therapy; or*
 - (m) Graduate professional counseling.*
- (4) "Synchronous" means simultaneously or quickly enough to allow two or more individuals to conduct a conversation.*
- (5) Teletherapy.*
 - (a) "Teletherapy" means the use of interactive audio, video, or other telecommunications or electronic media by a counselor or therapist to deliver counseling services:*
 - (i) Within the scope of practice of the counselor or therapist; and*
 - (ii) At a location other than the location of the client;*
 - (b) "Teletherapy" does not include:*
 - (i) An audio-only telephone conversation between a counselor or therapist and a client;*
 - (ii) An electronic mail message between a counselor or therapist and a client;*
 - (iii) A facsimile transmission between a counselor or therapist and a client; or*
 - (iv) A text message or other type of message sent between a counselor or therapist and a client by a short message service or multimedia messaging service.*

.03 Licensure.

A counselor or therapist licensed or certified in Maryland may provide counseling services using teletherapy if one or both of the following occurs:

- A. The individual practicing teletherapy is physically located in Maryland; or*
- B. The client is in Maryland.*

.04 Standards of Practice for Teletherapy.

- A. Before providing teletherapy services, a counselor or therapist shall develop and follow a procedure to:*
 - (1) Verify the identification of the client receiving teletherapy services;*
 - (2) Obtain oral and written acknowledgement from the client;*
 - (3) Prevent access to data by unauthorized persons through encryption, or other means;*
 - (4) Notify clients in the event of a data breach;*
 - (5) Ensure that the teletherapy practitioner provides a secure and private teletherapy connection and complies with federal and state privacy laws; and*
 - (6) Establish safety protocols to be used in the case of an emergency.*
- B. A counselor or therapist shall:*
 - (1) Obtain or confirm an alternative method of contacting the client in case of a technological failure;*
 - (2) Determine whether the client is in Maryland and identify the client's practice setting;*
 - (3) For an initial teletherapy interaction only, disclose the counselor or therapist's name, location, license number, and contact information;*
 - (4) Identify all individuals present at each location and confirm they are permitted to hear the client's health information; and*
 - (5) Be held to the same standards of practice and documentation as those applicable for in-person sessions.*
- C. A counselor or therapist may not treat a client based solely on an online questionnaire.*

.05 Client Evaluation.

A. A counselor or therapist shall perform a client evaluation adequate to establish diagnoses and identify underlying conditions or contraindications to recommended treatment options before providing treatment.

B. If the evaluation is adequate to comply with §A of this regulation, a counselor or therapist may use:

(1) Live synchronous audio-visual communication;

(2) Other methods of performing a counseling examination remotely; or

(3) A counseling evaluation performed by another counselor or therapist providing coverage.

.06 Discipline.

A. The Board shall use the same standards in evaluating and investigating a complaint and disciplining a counselor or therapist who practices teletherapy as it would use for a counselor or therapist who does not use teletherapy technology.

B. The failure of a counselor or therapist to comply with this chapter shall constitute unprofessional conduct and may be subject to disciplinary action by the Board.

ROBERT R. NEALL

Secretary of Health